

1 ANNA Y. PARK, CA SBN 164242  
DEREK W. LI, CA SBN 150122  
2 THOMAS S. LEPAK, CA SBN 245649  
thomas.lepak@eeoc.gov  
3 U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
4 LOS ANGELES DISTRICT OFFICE  
255 East Temple Street, Fourth Floor  
5 Los Angeles, California 90012  
Telephone: (213) 894-1032  
6 Facsimile: (213) 894-1301  
E-Mail: lado.legal@eeoc.gov  
7

8 Attorneys for Plaintiff  
U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
9

10 LINDA CLAXTON, State Bar No. 125729  
linda.claxton@ogletreedeakins.com  
11 BRANDYN E. STEDFIELD, State Bar No. 225357  
brandyn.stedfield@ogletreedeakins.com  
12 OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.  
13 633 West Fifth Street, 53rd Floor  
Los Angeles, California 90071  
14 Telephone: (213) 239-9800  
Facsimile: (213) 239-9045  
15

16 Attorneys for Defendant  
UNION PACIFIC RAILROAD CO.  
17

18 **UNITED STATES DISTRICT COURT**  
19 **SOUTHERN DISTRICT OF CALIFORNIA**

20  
21 U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,  
22

23 Plaintiff,

24 v.  
25

26 UNION PACIFIC RAILROAD CO.,  
and DOES 1-11, inclusive,  
27

28 Defendants.

} Case No.: 07 CV 1707 W NLS

} **[PROPOSED] CONSENT DECREE**

1 Plaintiff U.S. Equal Employment Opportunity Commission (the "EEOC")  
 2 and Defendants Union Pacific Railroad Co., and DOES 1-11, inclusive, hereby  
 3 stipulate and agree to entry of this Consent Decree (the "Decree") to fully and  
 4 finally resolve Plaintiff's complaint against Defendant in U.S. Equal Employment  
 5 Opportunity Commission v. Defendants Union Pacific Railroad Co., and DOES 1-  
 6 11, inclusive; Case No. 07 CV 1707 W NLS (the "Action"). On August 28, 2007,  
 7 Plaintiff filed this Action in the United States District Court, Southern District of  
 8 California, for violation of Title VII of the Civil Rights Act of 1964, as amended,  
 9 42 U.S.C. §§ 2000e *et seq.* ("Title VII") and the Civil Rights Act of 1991. The  
 10 Action alleges that Defendants discriminated against Charging Party Lucy  
 11 Velazquez when it denied her an employment position because of her sex (female).

# 12 I.

## 13 **PURPOSES AND SCOPE OF THE CONSENT DECREE**

14 A. The Decree is made and entered into by and between the EEOC and  
 15 Union Pacific Railroad Co. and shall be binding on and enforceable against Union  
 16 Pacific Railroad Co., as well as its officers, directors, agents, successors and  
 17 assigns ("Union Pacific" or "Defendant"). Collectively, the EEOC and Union  
 18 Pacific are referred to herein as the "Parties."

19 B. The Parties have entered into this Decree for the following purposes:

- 20 1. To provide appropriate monetary and injunctive relief;
- 21 2. To ensure employment practices in compliance with federal  
 22 law;
- 23 3. To ensure a work environment free from retaliation;
- 24 4. To ensure training of managers in employment discrimination  
 25 law; and
- 26 5. To ensure dissemination of an employment discrimination  
 27 policy reflective of federal law.

28 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**II.**

**RELEASE OF CLAIMS**

A. This Decree fully and completely resolves all issues, claims and allegations raised by the EEOC against Union Pacific in this Action.

B. Nothing in this Decree shall be construed to preclude the EEOC from bringing suit to enforce this Decree in the event that Union Pacific fails to perform the promises and representations contained herein.

C. Nothing in this Decree shall be construed to limit or reduce Union Pacific's obligation to comply fully with Title VII or any other federal employment statute.

D. This Decree in no way affects the EEOC's right to bring, process, investigate or litigate other charges that may be in existence or may later arise against Union Pacific in accordance with standard EEOC procedures.

**III.**

**JURISDICTION**

A. The Court has jurisdiction over the Parties and the subject matter of the Action.

B. The Action asserts claims that, if proven, would authorize the Court to grant the equitable relief set forth in this Decree.

C. The terms and provisions of this Decree are fair, reasonable and just.

D. This Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights or privileges of any person.

E. The Court shall retain jurisdiction of this action during the duration of the Decree for the purposes of entering all orders, judgments and decrees that may be necessary to implement the relief provided herein.

//

//

1 IV.

2 **EFFECTIVE DATE AND DURATION OF DECREE**

3 A. The provisions and agreements contained herein are effective  
4 immediately upon the date which this Decree is entered by the Court (the  
5 "Effective Date").

6 B. Except as otherwise provided herein, this Decree shall remain in  
7 effect for three (3) years after the Effective Date.

8 V.

9 **MODIFICATION AND SEVERABILITY**

10 A. This Decree constitutes the complete understanding of the Parties with  
11 respect to the matters contained herein. No waiver, modification or amendment of  
12 any provision of this Decree will be effective unless made in writing and signed by  
13 an authorized representative of each of the Parties.

14 B. If one or more provisions of the Decree are rendered unlawful or  
15 unenforceable, the Parties shall make good faith efforts to agree upon appropriate  
16 amendments to this Decree in order to effectuate the purposes of the Decree. In  
17 any event, the remaining provisions will remain in full force and effect unless the  
18 purposes of the Decree cannot, despite the Parties' best efforts, be achieved.

19 C. By mutual agreement of the Parties, this Decree may be amended or  
20 modified in the interests of justice and fairness in order to effectuate the provisions  
21 herein.

22 VI.

23 **COMPLIANCE AND DISPUTE RESOLUTION**

24 A. The Parties expressly agree that if the EEOC has reason to believe that  
25 Union Pacific fails to comply with any provision of this Consent Decree, the  
26 Commission may bring an action before this Court to enforce the Decree. Prior to  
27 initiating such action, the Commission will notify Union Pacific and/or its legal  
28 counsel of record, in writing, of the nature of the dispute. This notice shall specify

1 the particular provision(s) that the Commission believes Union Pacific has  
 2 breached. Absent a showing by either party that the delay will cause irreparable  
 3 harm, Union Pacific shall have thirty (30) days to attempt to resolve or cure the  
 4 breach.

5 B. The Parties agree to cooperate with each other and use their best  
 6 efforts to resolve any dispute referenced in the EEOC notice.

7 C. After thirty (30) days have passed with no resolution or agreement to  
 8 extend the time further, the Commission may petition this Court for resolution of  
 9 the dispute, seeking all available relief, including an extension of the term of the  
 10 Decree for such period of time as Union Pacific is shown to be in breach of the  
 11 Decree, the Commission's costs and attorneys' fees incurred in securing  
 12 compliance with the Decree, and/or any other relief the court deems appropriate.

## 13 VII.

### 14 MONETARY RELIEF

15 A. In settlement of this lawsuit, Union Pacific shall pay a total of  
 16 \$75,000.00 (seventy five thousand dollars and zero cents) to Charging Party Lucy  
 17 Velazquez.

18 B. Union Pacific shall forward a check to Lucy Velazquez within fifteen  
 19 (15) days of the Effective Date of this Decree and after Lucy Velazquez submits a  
 20 completed form W9 to Union Pacific. Seventy five percent (75%) of the monies  
 21 shall be designated as non-wage compensation under Title VII and no tax  
 22 withholding shall be made. Twenty five percent (25%) of the monies shall be  
 23 designated as lost wages; applicable railroad tax withholdings shall be made with  
 24 Union Pacific paying any employer share. Union Pacific shall prepare and  
 25 distribute 1099 tax reporting forms to Lucy Velazquez and shall make the  
 26 appropriate reports to the Internal Revenue Service and other tax authorities.  
 27 Within forty (40) business days of the issuance of the settlement check, Union

28 //

1 Pacific shall submit to the Commission a statement verifying issuance of the  
2 settlement checks.

3 **VIII.**

4 **VICTIM-SPECIFIC INJUNCTIVE RELIEF**

5 A. Within thirty (30) days of the Effective Date of this Decree, Union  
6 Pacific shall proffer an agreement to the Brotherhood of Maintenance of Way  
7 Division of the International Brotherhood of Teamsters union to make Lucy  
8 Velazquez retroactive Group 26(a) seniority status backdated to February 10, 2005.  
9 Within forty (40) days of the Effective Date, Union Pacific shall submit to the  
10 Commission a statement verifying issuance of the proposed agreement. This  
11 Decree in no way affects Lucy Velazquez's ability to apply for any position or  
12 promotion and/or obtain any other seniority ranking.

13 **IX.**

14 **GENERAL INJUNCTIVE RELIEF**

15 A. **Non-Discrimination**

16 Union Pacific and its successors, as well as their officers, agents,  
17 management (including all supervisory employees), successors, assigns, and all  
18 those in active concert or participation with them, or any of them, hereby agree not  
19 to discriminate against persons on the basis of sex in hiring, job assignment, and  
20 any terms or conditions of employment.

21 B. **Retaliation**

22 Union Pacific, its officers, agents, management (including all supervisory  
23 employees), successors, assigns, and all those in active concert or participation  
24 with them, or any of them, hereby agree not to engage in, implement or permit any  
25 action, policy or practice with the purpose of retaliating against any current or  
26 former employee or applicant of Union Pacific because he or she has in the past or  
27 during the term of this Decree:

28 1. Opposed any practice made unlawful under Title VII;

2. Filed a charge of discrimination alleging such practice;
3. Participated in any manner in an internal or external investigation or proceeding relating to this case or any claim of a Title VII violation;
4. Was identified as a possible witness or claimant in this action;
5. Asserted any rights under this Decree; or
6. Sought and/or received any relief in accordance with this Decree.

**X.**

**OTHER SPECIFIC INJUNCTIVE RELIEF**

**A. Policies and Procedures**

Union Pacific shall review, revise (as necessary), distribute, and implement its policies and procedures against discrimination and retaliation prohibited by Title VII (the "Policy"). The Policy shall include:

1. A clear explanation of prohibited conduct;
2. Assurance that employees who make complaints of discrimination and/or harassment or who provide information related to such complaints are protected against retaliation; and
3. Assurance that Union Pacific will take prompt and appropriate corrective action when it determines that discrimination, harassment, and/or retaliation has occurred.

Within forty (40) days of the Effective Date of this Decree, Union Pacific shall provide to the EEOC a copy of the Policy. Union Pacific confirms that the Policy was disseminated to management employees in April 2008 and to union/agreement employees in June 2008 and that the Policy will be distributed to these employees during the same time frame in 2009.

For each new employee or manager hired after distribution of the Policy described above, Union Pacific shall ensure that the Policy is sent to the new employee and/or manager within thirty (30) days of employment.

//

1           B.    Training

2           1.    During the term of this Decree, on an annual basis, Union Pacific shall  
3 provide interactive training of at least one hour duration to all Engineering  
4 Department track program managers whose work location is based in California.  
5 The training shall cover Union Pacific's Policy and federal laws regarding  
6 employment discrimination on the basis of sex. All persons required to attend such  
7 training shall verify their attendance in writing. For any person unable to attend  
8 the training, Union Pacific may train the person through video or other non-  
9 interactive means.

10          2.    During the term of this Decree, on an annual basis, Union Pacific shall  
11 provide interactive training of at least one hour duration to all Engineering  
12 Department Union/Agreement Supervisors working in California. The training  
13 shall cover Union Pacific's Policy and federal laws regarding employment  
14 discrimination on the basis of sex. All persons required to attend such training  
15 shall verify their attendance in writing. For any person unable to attend the  
16 training, Union Pacific may train the person through video or other non-interactive  
17 means.

18          3.    Within forty (40) days of the Effective Date, Union Pacific shall  
19 submit to the Commission a statement describing the intended content and the  
20 materials to be used in the first trainings under §§ X(B)(1) and (2) of this Decree.

21           C.    Management

22          1.    Within forty (40) days of the Effective Date of this Decree, Union  
23 Pacific shall submit to the Commission a letter verifying the allegations against  
24 Todd Stotts in connection with this case are notated in his EEO file.

25          2.    Within forty (40) days of the Effective Date of this Decree, Union  
26 Pacific shall issue shall submit to the Commission a letter verifying  
27 the allegations against Karl Siemon in connection with this case are notated in his  
28 EEO file.

1           D.   Record Keeping

2           Union Pacific confirms that it maintains a record-keeping procedure that  
3 provides for the centralized tracking of documents concerning right of selection  
4 assignments to open agreement positions. Union Pacific confirms that it maintains  
5 a record-keeping procedure that provides for the centralized tracking of documents  
6 concerning all complaints of sex discrimination, as well as the monitoring of such  
7 complaints to prevent sex discrimination. Union Pacific agrees to allow the EEOC  
8 to access these records during the term of this Decree. The documents retained  
9 shall be summarized in the annual reports set forth below.

10          For the duration of the Decree, other records to be maintained shall include:

11          1.   All documents acknowledging a manager's electronic receipt of the  
12 Policy as required under this Decree;

13          2.   All documents acknowledging mailing of the Policy to any employee  
14 as required under this Decree;

15          3.   All documents verifying the occurrence of all training sessions and  
16 names and positions of all attendees for each session as required under this Decree;  
17 and

18          4.   A document or spreadsheet summarizing any internal or external  
19 complaint or investigation of claims of failure to promote based on gender filed by  
20 any Engineering Department employee, including the names of the claimant, the  
21 names of the alleged perpetrator(s), a brief description of the nature of the alleged  
22 gender discrimination, and a brief description of how the complaint was  
23 investigated and/or resolved.

24           E.   Reporting:

25          Union Pacific shall provide the following reports to the EEOC annually  
26 throughout the term of this Decree:



1 Temple Street, 4th Floor, Los Angeles, CA, 90012; facsimile number (213) 894-  
2 1301.

3 D. The Parties agree to entry of this Decree and judgment subject to final  
4 approval by the Court.

5 All Parties, through the undersigned, respectfully apply for and consent to  
6 the entry of this Consent Decree Order.

7 Respectfully submitted,

8  
9 U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

10  
11 Date: 01/20/2009

12 By: 

13 Anna Y. Park  
14 Attorneys for Plaintiff

15 OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

16  
17 Date: 2/2/2009

18 By: 

19 Linda Claxton  
20 Attorneys for Defendant

21 **[PROPOSED] ORDER**

22 GOOD CAUSE having been shown, the provisions of the foregoing Consent  
23 Decree are hereby approved and compliance with all provisions thereof is

24 **HEREBY ORDERED.**

25  
26  
27 Date: \_\_\_\_\_

28 The Honorable Thomas J. Whelan  
United States District Court Judge